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4                   UNITED STATES DISTRICT COURT  
5                   WESTERN DISTRICT OF WASHINGTON  
6                   AT TACOMA

7 KEITH L. NASH,

8                   Petitioner,

9                   v.

10 DOUG WADDINGTON,

11                   Respondent.

12                   Case No. C04-5785FDB

13                   ORDER DENYING CERTIFICATE  
14                   OF APPEALABILITY AND LEAVE  
15                   TO FILE OVERLENGTH REPLY

16                  Petitioner moves for a certificate of appealability of this Court's adoption of the conclusion in  
17                  the Report and Recommendation that this petition is time barred pursuant to 28 U.S.C. § 2254(b)(2).  
18                  Respondent opposes this motion and Petitioner also moves to file an overlength brief of 21 pages in  
19                  reply to Respondent's three-page brief.

20                  The Court is not convinced that the issue herein is one that reasonable jurists could debate or  
21                  that the issue presented is one that is adequate to deserve encouragement to proceed further. *See*  
22                  *Slack v. McDaniel*, 529 U.S. 473, 481-82 (2000).

23                  ACCORDINGLY, IT IS ORDERED:

24                  1.       Petitioner's Motion for Certificate of Appealability [Dkt. # 42] is DENIED;

25                  2.       Petitioner's Motion for Leave to File Overlength Reply Brief [Dkt. # 46] is DENIED.

26                  DATED this 24<sup>th</sup> day of August, 2005.



27                  FRANKLIN D. BURGESS  
28                  UNITED STATES DISTRICT JUDGE

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36 ORDER - 1